

09-014595-CZ

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

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JOHNSON CONTROLS, INC., a  
Wisconsin Corporation, and  
JCIM, LLC, a Delaware limited  
liability company,

CATHY M. GARRETT

2/25/2014 11:49:26 AM

Plaintiff/Counter-defendants,

/s/ Kelly Smalley

vs.

Case No. 09-014595-CZ  
Hon. Brian R. Sullivan

ATLANTIC AUTOMOTIVE COMPONENTS,  
a Michigan limited liability company,

Defendant/Counter-plaintiff.

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**FINDINGS OF FACT AND CONCLUSION OF LAW**

At a session of said Court, held in the City  
County Building, City of Detroit, County of  
Wayne, State of Michigan, on February 14, 2014

PRESENT: HONORABLE BRIAN R. SULLIVAN

Introduction

Defendant and counter-plaintiff, Atlantic Automotive Components (Atlantic), is a Tier 2 auto supplier. It made interior door parts made for final assembly in Ford trucks pursuant to a contract with Visteon, a Tier 1 provider.

Plaintiff and counter-defendant, Johnson Controls, Inc. (JCI) is a Tier 1 supplier. JCI assumed Visteon's role after the door project began. JCI and Atlantic entered into a new contract for production of the same parts, but the parties did not renegotiate the piece price JCI was to pay Atlantic for the parts.

JCI terminated Atlantic before the contract expired. JCI sued for the return of the Ford manufacturing tools Atlantic used in production. Atlantic resisted the return of the tools and countersued JCI.

Trial was held on JCI's (ultimate) claims of breach of contract (failure to release tools and price overcharge), claim and delivery, negligent misrepresentation, innocent misrepresentation, and common law and statutory conversion. Atlantic filed a counterclaim against JCI for breach of contract, conversion and unjust enrichment.

The central issue which underlies the other issues in the case is the type and validity of the contract between the parties. JCI alleged the contract with Atlantic is a satisfaction contract of which JCI was the sole determiner of whether it was satisfied with Atlantic's performance. JCI asserted it was not satisfied with Atlantic's quality, times of production, or its disclosure of costs.

Atlantic claimed the contract is a just cause contract. Atlantic claimed JCI and Ford colluded to discharge Atlantic so Ford could save money and JCI increase its profit by making the parts instead of Atlantic. Collusion (pretext) is a valid legal defense to JCI's asserted dissatisfaction with Atlantic's performance under the contract.

Based on examination of all the evidence, the exhibits and testimony of the witnesses the Court finds: (i) Atlantic breached the contract with JCI based on the quality of the part it produced, the results of JCI's audit, and Atlantic's failure to disclose costs and fees in compliance with the contract. (ii) JCI is entitled to terminate the contract for Atlantic's breach of contract but the Court awards no money damages as the piece price was agreed to by the parties and termination was JCI's sole remedy under the contract. (iii) Atlantic's refusal to return the tools to JCI (claim and delivery), as set forth below, is a breach of contract with JCI, and JCI is awarded costs and fees for that breach. (iv) The Court finds no cause of action on JCI's claims of misrepresentation (negligent and

innocent), and conversion, both common law and statutory. (v) The Court finds no cause of action on Atlantic's counterclaim of breach of contract, conversion and unjust enrichment. The reasons are set forth below.

## I. FACTS.

### A. Contract.

Atlantic was awarded a parts production contract to produce door parts for final assembly in a Ford truck by Visteon, a Tier 1 supplier. The award was made in an April 13, 2005 sourcing letter.<sup>1</sup> Atlantic got the contract through a competitive bid process. The program life expectancy was five years, to begin about October, 2006. The 2005 contract called for Atlantic to manufacture, among other things, the 2007 Ford P356's interior door panel and map pocket. The parts were made at Atlantic's site in Benton Harbor, Michigan and were originally shipped to Utica, Michigan for further assembly.

However, before Atlantic began production Visteon was out of the picture. Ford owned Automotive Components Holdings (ACH). ACH apparently assumed Visteon's role and the same terms of the 2005 contract with Atlantic. Atlantic began shipping parts to ACH in January, 2007. ACH was replaced by JCI in May, 2007.

JCI and Atlantic entered into a new written contract after negotiation with Atlantic. That contract (also called an 'Award Letter' or 'Supply Agreement') stated JCI selected Atlantic to produce the listed parts for the "Ford P356 program" for the length of the program design now "expected to be 2.5 years." May 25, 2007 contract, page 1. The contract, contingent on Atlantic's acceptance, was signed by Atlantic's representative on July 16, 2007.

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<sup>1</sup> At the time Visteon owned about 70 percent of Atlantic.

JCI reserved several specific rights under that contract with Atlantic. The contract stated:

This award is subject to your prompt written acceptance and *may be cancelled by Johnson Controls at any time* if any of the following do not occur:

*Atlantic's submission, and Johnson Controls acceptance, of a full piece price and tooling breakdown, to include material, labor, burden, SG&A, profit, and any other detail information requested by JCI within two weeks of the date of this letter.*

*A successful audit and approval of piece price and tooling. JCI reserves the right to audit all tools and invoices.* World market pricing will influence supplier reimbursement for all tooling, gauges and equipment.

*Our mutual agreement and execution of a detailed Supplier Statement of Work as requested by Johnson Controls.*

*Johnson Controls continuing satisfaction with Atlantic's quality, delivery, meeting of program milestones, services and price competitiveness. Johnson Controls may resource part or all of prototype or production supply, as deemed appropriate, in its sole discretion, if these conditions are not met.*

Our Supply Agreement for this program will become effective when your authorized representative signs below, acknowledging our agreement that Johnson Controls will purchase it's production and service requirements from Atlantic and Atlantic will fill all of Johnson Controls stated orders for the production and service life of each part *at the fixed prices stated above*, subject to an annual price reduction of three percent... effective on December 18, 2007 and each subsequent one year anniversary of that date, and subject to adjustment based only on mutually agreed VA/VE changes or engineering directed by Johnson Controls. Johnson Controls will issue purchase orders and releases to reflect these orders and such changes, which Atlantic agrees to accept and perform subject to this agreement. Atlantic must also participate in good faith in Johnson Controls VA/VE cost reduction initiatives.

*Atlantic acknowledges that Johnson Controls will be entitled to possession of all tooling (including fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related appurtenance, accessions and accessories), packaging and all documents, standards or specifications, trade secrets, proprietary information and all other materials and items used by Atlantic to produce the parts listed above. ...if a vendor resource scenario occurs at the*



*direction of Johnson Controls Atlantic will retain permanent responsibility for providing past service products unless required tooling is transferred as part of the resource."* (Contract, page 1 and 2, emphasis supplied).

The contract did not reflect a re-negotiated piece price nor provide JCI with any specific remedy for breach. Atlantic continued to produce the same parts as it did for Visteon/ACH. The Utica assembly plant closed and the product was shipped out of state for assembly. Problems with quality emerged during Atlantic's production. Meetings between JCI and Atlantic were held to resolve the quality issues.

JCI claims it was dissatisfied with Atlantic's parts quality. Interior quality assurance measures were implemented to improve the quality of the parts.

JCI also conducted an audit of Atlantic pursuant to the contract. JCI concluded Atlantic produced the parts faster than reported to JCI (cycle time), and used less colorant and less resin than reported to JCI. Atlantic made the part more efficiently than JCI originally thought. JCI was not satisfied with the audit results.

On May 4, 2009 JCI terminated its contract with Atlantic by written letter. A follow up letter was sent by JCI counsel, which set forth additional grounds for termination of Atlantic.

Atlantic continued production through about August, 2009. Production was then taken over by JCI. The P356 program ended when the P473 program began, in January or February 2010.

#### B. Tools.

JCI sought the Ford manufacturing tools from Atlantic upon Atlantic's termination. Atlantic refused to turn them over. JCI could not produce the door parts without the tools.

JCI filed suit against Atlantic in Wayne County Circuit Court to get the tools. The tools were ordered to be returned by the Court and a bond posted by JCI until the merits of the case were determined.

#### C. Suit.

JCI filed counts against Atlantic of: 1. Claim and delivery; 2. Breach of contract, 3. Conversion, both statutory and common law.

Atlantic countersued JCI for breach of contract (Ford and Chrysler<sup>2</sup> projects), statutory conversion and unjust enrichment.

JCI filed an amended complaint and added counts of negligent and innocent misrepresentation against Atlantic.

#### D. Other Claims.

##### 1) JCI.

JCI claimed: (i) Atlantic failed to comply with the Supply Agreement requirement that Atlantic disclose its piece price costs and SSOW fees and tooling breakdown (labor, material, burden, SG&G, profit...), in compliance with the award contract. As a result of that noncompliance Atlantic was alleged to have overcharged JCI for the piece price part production; and (ii) that Atlantic overstated (inflated) its cancellation costs.

##### 2) Atlantic.

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<sup>2</sup> This part of the suit was later dismissed.

a) Atlantic claimed that Ford secretly or privately (without Atlantic's knowledge) negotiated with JCI to eliminate Atlantic as a supplier in violation of the supply contract. Atlantic said: (i) "JCI deceived Atlantic"; (ii) "that the May, 2007 agreement could be terminated for just cause only"; and (iii) "if the P356 part production lasted less than five years JCI would pay cancellation costs." (Atlantic's proposed findings of fact, pages 3 and 4).

Atlantic claimed JCI could not undertake the production until it had capacity (space) and knowledge ("know how") to provide the parts. JCI got the space when it acquired a plant in Louisville, KY and got the knowledge from its contractual audit of Atlantic's production.

b) Atlantic maintained it had a contractual right with JCI to produce the door for the "program life" which Atlantic interpreted to mean that it could make the parts for as long as the door was being made or end of program.

c) Atlantic contended its performance conformed to industry standards, which is sufficient to satisfy the contract, or alternatively, is a standard the Court should enforce instead of the contract.

d) Atlantic claimed JCI acted in bad faith and the UCC controls this case, including the duties of good faith and fair dealing.

## E. Elements

### 1. Contract.

A party claiming breach of contract has the burden to establish the following elements by a preponderance of the evidence: 1) There was a contract; 2) a party breached the contract; 3) the party asserting the breach suffered damages as a result of the breach. See *Stevenson v Brotherhoods Mutual Benefit*, 312 Mich 81, 90-91 (1945); *Residential Rate Payer Consortium v Public Service Commission*, 198 Mich App 144 (1993); see M. Civ J I 142.01.

## 2. Misrepresentation.

The elements of misrepresentation are: 1) the defendant made a material representation; 2) the representation was false; 3) the defendant knew, or should have known, the representation was false when made; 4) the defendant made the representation with the intent the plaintiff would act upon it; 5) the plaintiff acted upon the misrepresentation; and 6) suffered damages as a result. *M and D, Inc. v WB McConkey*, 231 Mich App 22, 27 (1998).

## 3. Innocent Misrepresentation.

A claim of innocent misrepresentation is shown if a party to a contract detrimentally relies on a false representation in such a manner that the injury suffered by the plaintiff inures to the benefit of the defendant, the party who made the misrepresentation. *McConkey, supra*, at 27-28.

## 4. Conversion.

The tort of conversion occurs when there is any distinct act of dominion wrongfully exerted over the personal property of another in denial of, or inconsistent with, the rights of that person. *Foremost Insurance Company v Allstate Insurance Company*, 439 Mich 378 (1992).

The elements of conversion are: 1) the plaintiff had superior rights in property; 2) the plaintiff is entitled to possession; and 3) the defendant wrongfully converted the property to their own. See *Belcher v Ranney*, 211 Mich 438 (1920).

Conversion can also be predicated on statute. Statutory conversion consists of knowingly "buying, receiving, or aiding in the concealment of any stolen, embezzled or converted property." *Head v Phillips Camper Sales*, 234 Mich App 94, 111 (1999); MCL 600.2919a; *Lawsuit Financial, LLC v Curry*, 261 Mich App 579 (2004).

Although conversion is an intentional tort it may also be committed even if one is unaware of the plaintiff's property interest. *Curry, supra*. Moreover, conversion may be committed by the deliberate refusal to surrender a chattel on demand. See *Citizens Insurance Company of America v Delcamp Truck Center, Inc.*, 178 Mich App 570 (1989); see *Thomas v Tracy Motor Sales, Inc.*, 360 Mich 434 (1960); MCL 600.2919(a).

Treble damages are not automatic, but are within the discretion of the court based on what is fair under the circumstances. See *In Re: Anton*, 2013 WL 1747907 (2013); *Polybond, Inc. v Jen Tech Corp.*, 3010 WL 2925428.

##### *5. Claim and Delivery.*

The elements of claim and delivery are: 1) that the plaintiff must have the right to possess goods or chattels; 2) that the defendant has taken or unlawfully detained those goods; and 3) that the plaintiff has suffered damages. See MCL 600.2920; *Ledoc v*

*Beechler*, 252 Mich 633 (1930).

## 6. Unjust Enrichment.

The elements of unjust enrichment are: 1) the receipt of a benefit by the defendant from the plaintiff; and 2) which benefit is inequitable that the defendant retain it. See *Dumas v Auto Club Insurance Association*, 437 Mich 521 (1991).

A claim for unjust enrichment cannot exist where there is a valid contract covering the same subject matter. See *Morris Pumps v Centerline Piping, Inc.* 273 Mich App 187 (2006) *lv den* 480 Mich 928 (2007). Unjust enrichment or quasi-contract is a contract in law. *Dumas, supra*.

## II. TRIAL

### A. Witnesses.

The trial consisted of the testimony of the following witnesses: Jeffrey Sweitzer, Len Walter, Joe Murray, Alan Berger, Michelle Muir, Julie DeVries, Mike Merriman, William Metzdorf, Nickolas DeMiro, B. Andrews, Jennifer Jones, Marie Stone, R. Burns, M. Kamps, Coby Kempkers, Peter Gable, Kenneth Munn, James Burlingham, William Humphries, Steven Orr, Elizabeth Villiard, Collette French and Burt Pierson. Some of these witnesses testified on numerous occasions and some testimony was presented by way of deposition or video deposition.

### B. Trial timeline.

The presentation of the testimony ended about May 5, 2013. JCI submitted about 139 exhibits, several thousand pages in length.

Atlantic submitted about 155 exhibits, also comprised of several thousand pages.<sup>3</sup>

Closing argument concluded June 13, 2013.

Atlantic and JCI both submitted proposed findings of fact (accompanied by closing binders) received in this Court about June 18, 2013. Atlantic's closing binder was comprised of over 130 exhibits and transcript excerpts and documents was over a thousand pages. JCI's closing binder was of similar length and content.

Both parties also submitted proposed conclusions of law to the Court.

### C. Findings of Fact.

The Court finds the following facts:

1. Ford selected Visteon as a tier one supplier in 2004.
2. Visteon selected Atlantic to be its tier two supplier about May 7, 2005.
3. Atlantic incurred \$8,980,442.00 in startup costs, which included building expansion, purchase of 4 major machines, launch costs, development and research, costs, etc., all of which were known to Visteon.
4. In March, 2007 Atlantic proposed to Ford that it should be both the tier one and tier two supplier to Ford on this project with the production consolidation resulting in a savings to Ford.
5. ACH replaced Visteon as the tier 1 supplier to Ford under the same contract with Atlantic. ACH was soon replaced.
6. Ford chose JCI to be the tier one supplier to replace ACH.
7. JCI chose Atlantic to continue the production of the P356 door parts.
8. JCI and Atlantic entered into a new contract.

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<sup>3</sup> Atlantic came upon about five thousand pages of documents in its archives and served them on JCI 4 pm Friday. The testimony of William Humphry, the final trial witness, was completed the following trial day, a few days after the documents were served.

9. The contract entered between JCI and Atlantic is a satisfaction contract, not a just cause contract.

10. Atlantic and JCI agreed the P356 and P473 programs were separate programs. This understanding is based on the plain language of the contract, the correspondence between the parties, the separate correspondence to Ford by Atlantic and JCI at different times, and the length of the time of the program specified in the contract.

11. The contract specified the P356 program was for a limited time period "expected to be 2.5 years" not for however long Ford used the parts.

12. JCI was entitled to, among other things, trade secrets and proprietary practices, etc. under the contract.

13. The P356 contract ended when the P473 program began, which was in January/February, 2010.

14. JCI retained the existing piece pricing Atlantic had with VISTEON/ACH and neither party re-negotiated it.

15. JCI specifically bargained for the right to verify the piece price cost via an audit.

16. As part of its contract Atlantic was required to provide tooling and piece price breakdown, detailed Supplier Statement of Work (SSOW), and disclose its costs in a particular manner and form to JCI.

17. The contract specifically provided JCI could cancel it if Atlantic did not submit - and JCI accept - Atlantic's "full piece price and tooling breakdown" building material, labor, burden, SG&A, profit - and any other detailed information JCI requested.

18. JCI requested the breakdown from Atlantic but JCI did not receive it nor accept it. This is a breach of contract by Atlantic warranting cancellation by JCI.

19. Atlantic's placement of machine costs, building expansion costs, research and



development and other costs under the category of "machine" costs on the provided sheet does not constitute compliance with the contractual requirement that Atlantic disclose its costs in a particular manner as required by JCI.

20. JCI was not required to interpret the SSOW to conclude Atlantic included its unitemized costs in the machine category. JCI specifically directed Atlantic to provide it on a special amortization line which Atlantic failed to do.

21. Atlantic did include packaging as a special amortization cost as costs under the contract.

22. "Industry standards" neither allow Atlantic to include its costs under the machine category, nor independently exempt Atlantic from compliance under the contract. The industry standard does not control the contract. Atlantic breached the contract when it did not disclose its costs in a place where JCI specified (and contractually expected) them to be itemized.

23. Atlantic, contrary to the contract, did not disclose its costs to JCI until it presented its cancellation costs to JCI, in the amount of \$3,468,142.00.

24. Atlantic's costs included building depreciation, not over 30 years, but over 14.5 years. The Court rejects this depreciation method as an afterthought for cancellation purposes.

25. There were quality problems with Atlantic's part production before the contract was terminated. JCI's evidence of Atlantic's quality problems is credible, to wit, the testimony of JCI employees who examined the product and testified at trial that Atlantic's quality was poor and not to JCI's satisfaction.

26. Ford and JCI did not collude to eliminate Atlantic before the end of the P356 contract. There is evidence Ford suggested, and JCI considered insource of part production. JCI resisted the Ford pressure.

27. There is strong evidence that as of April, 2009, JCI expected Atlantic to complete the P356 program and JCI would possibly insource the 473 program at the end of the P356 program. The Court had an opportunity to observe the witnesses as they testified, evaluate their demeanor and examine all the testimony in light of the other evidence presented at trial. The Court concludes that Atlantic's theory of collusion between JCI and Ford is not supported by credible evidence and rejects it.

28. The Court rejects Atlantic's alleged lost profits of \$1,204,447.00 because JCI made the parts after it got the tools from Atlantic. JCI did not breach the contract, Atlantic breached the contract.

29. The contract provided JCI could perform an audit to verify the piece price cost of the parts made by Atlantic. Based on that audit JCI could have negotiated a new price according to JCI's verifications of Atlantic's performance and costs.

30. Instead of undertaking piece price renegotiation, JCI, in its discretion, elected to terminate Atlantic, an exclusive right it had retained under the contract. JCI cannot now unilaterally impose a different price as damages which was not negotiated by the parties because the contract does not provide such remedy. JCI's claim for damages in terms of breach of contract fails, and JCI has cited no authority to this Court which would allow the Court to award such damages.

31. The Court finds JCI did not support its claims for damages for Atlantic's failure to comply with the contract on the claims except for the tools. The piece price in place between Visteon/ACH was adopted by JCI and Atlantic. There is nothing in the record to show another price is legally available to JCI if the audit times were as JCI contends.

32. JCI was entitled to the tools under the contract. Atlantic refused to produce them. Atlantic is required to pay the costs and attorney fees as well as interest for the failure to produce the tools pursuant to the contract.

### III. CONTRACT

#### A. Validity of Contract

The lynchpin of JCI's claims and Atlantic's counterclaims is: (1) whether or not the contract in existence between JCI and Atlantic is valid or not, and (2) if it is, what kind of contract it is.

JCI contends the contract is an enforceable, valid satisfaction contract of which JCI is the sole determiner.

Atlantic contends there was a just cause contract with JCI but it should be voided by the Court as a remedy for JCI's bad faith conduct.

Atlantic also contends the contract is a 'requirements contract' for the life of the program so that for however long the door is being utilized by Ford (through JCI) Atlantic had the right to make that part under the contract.

Atlantic claims the U.C.C. requirements of good faith, fair dealing and industry standards give this Court the authority to void the contract and award Atlantic damages for JCI's breach, cancellation costs, and fees.

#### 1. Discussion

A requirements contract is a common type of contract in the automotive industry. It generally provides that the buyer will purchase all its needs or requirements from the seller. See *Advanced Plastics v White Consolidated Industries, Inc.*, 828 Fd 2d 484, 488 Note 1, (ED Mich 1993) aff'd 47 Fd 3rd 1167 (6th Cir 1995); *In Re: Atlas Concrete Pipe, Inc.*, 668 Fd 2d 905 (6th Cir 1982). A contract for the life of a program is generally

considered to be an indefinite contract and is terminable at will by either party. *Advance Plastics, supra*.

The May 25, 2007 contract between JCI and Atlantic went through a couple of drafts. Changes were proposed (negotiated) and rejected. The final version, which Atlantic accepted by signing the contract and returning it to JCI, is the May 25, 2007 Supply Agreement (dated by Atlantic on June 6, 2007). It was introduced into evidence as Exhibit PP and controls the conduct of the parties.

The May 25, 2007 agreement not only states it controls the parties conduct it expressly incorporates JCI's Global Terms and Conditions (a separate written instrument) as follows:

The parties entire relationship and any Purchase Order(s) issued by Johnson Controls in connection with this program will be governed exclusively by Johnson Controls Global Terms and Conditions of purchase and any expressly applicable country supplement(s) all available at <http://JohnsonControls.com/aggr/global-terms.htm> except as modified by this letter.

Once accepted by Atlantic, Johnson Controls will rely on this agreement and Atlantic cannot cancel or terminate it except as expressly permitted by JCI's global Terms and Conditions.

Under Michigan law the two instruments, the May 25, 2007 supply agreement and Johnson Controls Global Terms and Conditions, are construed together as the agreement of the parties. *Charles J. Rogers, Inc. v Representatives of State Highways*, 36 Mich App 620 (1971); *Whittlesey v Herbrand*, 217 Mich 625 (1922).

In its answer to JCI's complaint Atlantic admitted it entered into a fixed price Supply Agreement to provide automotive component parts. Atlantic contended it complied with that contract until JCI terminated "...the contract before it's terms expire(d)" (See Atlantic's amended answer). Atlantic further claimed "ACH awarded this business to Atlantic for the production life of the Ford P356 program platform (Atlantic Amended answer paragraph 9,

page 12). Atlantic admitted to accepting the terms in the contract. Atlantic answer, paragraph 22, page 13: "These terms were acceptable to Atlantic." Atlantic further agreed it accepted the contract by signing it and returning it to JCI. Page 3, Atlantic's answer, see also paragraph 23, page 14. "The Ford Supply Agreement was a valid and binding contract between Atlantic and JCI." Atlantic answer, paragraph 46, page 16.

Atlantic acknowledged the validity of the contract under which it and JCI performed, Atlantic by fulfilling the production pursuant to a Purchase Order presented by JCI and JCI by paying Atlantic for that production.

The Court finds that the May 25, 2007 supply agreement between JCI and Atlantic is a valid binding contract. Moreover, the contract incorporates the terms of JCI's Global Terms and Conditions by express reference to it in the supply agreement.

## 2. The Contract Is a Satisfaction Contract

JCI contends the contract is a satisfaction contract, and JCI is the sole determiner of Atlantic's performance:

Johnson Controls may resource part or all of prototype or production supply, as deemed appropriate *in its sole discretion*, if these conditions are not met." (Emphasis supplied).

The law governing contract disputes are well known. A party may meet its burden by the presentation of circumstantial evidence. See *Karbel v Comerica Bank*, 247 Mich App 90 (2001). The fact finder is entitled to weigh both the quality and the quantity of the evidence presented during the course of trial. See *Kelly v Builders Square, Inc.* 465 Mich 29 (2001).

The primary goal of interpretation of a contract is to give effect to the intent to the parties. *Tenneco, Inc. v Amerisure Mutual Insurance Company*, 281 Mich App 429 (2008). The Court's primary obligation is to construe the language of the contract according to its

plain and ordinary meaning. *Terrien v Zwit*, 467 Mich 56, 71 (2002). If that language is not ambiguous the Court must interpret and enforce the contract as written. "The notion, that free men and women may reach agreements regarding their affairs without government interference and that courts will enforce those agreements, is ancient and irrefutable." *Quality Prod & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 370 (2003). "[T]he freedom to contract principle is served by requiring courts to enforce unambiguous contracts according to their terms..."; *Rory v Continental Ins. Co.*, 473 Mich 457, 461 (2005). An unambiguous contract is a reflection of the intent of the parties as a matter of law. See *In Re: Egbert R. Smith Trust*, 480 Mich 19 (2000). "A court must construe and apply unambiguous contract provisions as written." *Bloomfield Estates Improvement Ass'n, Inc. v City of Birmingham*, 479 Mich 206, 212 (2007). If a contract, even though poorly drafted or clumsily arranged, fairly discloses one meaning it is not ambiguous. *Meagher v Wayne State University*, 222 Mich App 700 (1997). A contract must be construed as a whole and its terms construed in context. See *Perry v Sied*, 461 Mich 680 (2000). A fundamental tenet of jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written. *Bloomfield Estates, supra*

*Isbell v Anderson Carriage Company*, 170 Mich 304 (1912) holds a party to a contract voluntarily assumes the consequences of a satisfaction contract:

It is elementary that Courts cannot make contracts for parties nor relieve them of the consequences of their contracts, however ill-advised." *Isbell, supra*, at 312.

*In Chambers Dev. Company, Inc. v Passaic County Utilities Authority*, 62 F3d 582, 589 (3d Cir 1995) the Court held:

As succinctly summed up by the third circuit in another context, "the sanctity of a contract is a fundamental concept of our entire legal structure. Freedom of contract includes the freedom to make a bad bargain. '[I]t is a fundamental principle of contract law, therefore, that, wise or not, a deal is a deal.'"

Courts can neither make a new agreement, nor by addition, attribute a meaning to the contract which is contrary to its express and unambiguous terms. *Stein, Hinkle, Daw & Associates, Inc. v Continental Casualty Company*, 110 Mich App 410 (1981): "[U]nder the guise of interpretation a court may not reform or modify a contract." Contracts which are unambiguous are not open to reconstruction and must be enforced as written. *Britton v John Hancock Mutual Life Insurance Company*, 30 Mich App 566 (1971).

As a general rule contracts founded on acts which are prohibited by statute or law, or a contract in violation of public policy, are void. *Maids International, Inc. v Saunders, Inc.* 224 Mich App 508 (1997); *Sands Appliance Servs., Inc. v Wilson*, 463 Mich 231 (2000). However, from this general rule of law it does not necessarily follow that every statutory or regulatory violation by a contracting party renders a contract void and unenforceable.

The contract between JCI and Atlantic is plain and unambiguous. The plain language of the supply agreement between JCI and Atlantic shows it is a satisfaction contract. Those words, which the parties agreed to, have meaning which this court must honor and enforce.

JCI and Atlantic had the freedom to contract the terms as they saw fit. They negotiated terms (except the piece price was previously set). They had the right to agree to terms which are contrary to, or in compliance with, industry standards, and were free to make their own agreement. See *Nagel Precision*. In this instance the parties agreed to a satisfaction contract.

In instances where a satisfaction contract grants the right of a party to determine the sufficiency of a party's performance the Court is precluded from making an independent determination as to a party's correctness or reasonableness (absent bad faith, dishonesty or fraud). See *Schemand v. Jandorf*, 175 Mich 88 (1913); *Isbell v*

*Anderson Carriage*, 170 Mich 304 (1912).

A satisfaction contract reposes the standard of satisfaction to one party's sole judgment. A party who reserves the right to determine something to its own satisfaction retains the right of determination as to the performance by the other party. The Court cannot second guess the reasonableness of the parties judgment. It is not up to the Court to determine whether or not the party should be satisfied with a different result. See *Schemand v Jandorf*, 175 Mich 88 (1913).

JCI and Atlantic agreed in the supply contract that were JCI, in it's sole discretion, to be dissatisfied with Atlantic's quality performance or JCI's audit, among other things, JCI retained the exclusive right to terminate the contract in its sole judgment, not that of another, including this Court.

Some of the conditions JCI reserved to itself under the contract included Atlantic's submission of a full piece price and tooling breakdown; a successful audit and approval of piece price and tooling; execution of a detailed Supplier Statement of Work; and Johnson Controls continuing satisfaction with Atlantic's quality service and price competitiveness.

The Court finds the contract, to which Atlantic agreed, specifically reserved to JCI the standard to determine Atlantic's performance under the contract: "In it's [JCI's] sole discretion." Supply contract, page 2.

#### a) Types of Satisfaction Contracts.

Satisfaction contracts have been historically categorized into two types; one, where satisfaction is contingent on "personal taste, subjective feeling fancy, or individual judgment of the party to be satisfied. See *Isbell, supra at 312*. The second type is where the satisfaction of a party is contingent on "mechanical utility or operative fitness in relation



to which some standard is available are bargained for." See *Isbell, supra* at 312-313. The dissatisfaction of a party must be both genuine and reasonable. See *Isbell, supra*, at 313; see also *Cacavas v Zack*, 43 Mich App 222 (1972).

The right to make the determination in this case, which the parties agreed, rested with JCI. The satisfaction rested with JCI because the contract was of the first type where the "individual judgement" of the party was agreed by JCI and Atlantic to be in the "sole discretion" of JCI. There is no evidence the parties bargained for or agreed to any other standard so the contract would fall under the second type of satisfaction contract. See *Isbell*, at 312, 313, *Leighton v Leighton*, 10 Mich App 424 (1968); *Nohcra Communications, Inc. v AM Communications, Inc.*, 909 F2d 1007 (1990), citing *Jenkins Towel Service, Inc. v Tidewater Oil Co.*, 427 Pa 601 (1966).

The Supply contract is not of the second type as no standard was bargained for. See *Leighton, supra; Isbell supra*. Nor did any party assert it was of the second type during trial.

The parties expressly agreed JCI would be the sole determiner of Atlantic's quality and compliance of Atlantic.

The axiom in law is the party for whom the other renders performance may reject that performance if the dissatisfaction is genuine. The Court cannot second guess the satisfaction of the party, but the satisfaction must be sincere and not "capricious" or exercised in "bad faith", *Nohcra, supra*. The bad faith/capricious limitation is well settled in Michigan jurisprudence.

b) The Court Cannot Rewrite the Contract.

Atlantic has requested this Court void the contract, based on an alleged private

agreement between Ford and JCI (based on JCI's bad faith conduct and/or motivation), and reconstruct a new one from the UCC. Atlantic contends JCI's motivation and conduct was immoral, that JCI did not act in good faith (contrary to the UCC), that the contract is a just cause contract and that this action provides the Court with the ability to void the contract.

The UCC states the freedom of contract is one of the goals the UCC seeks to support. The implied covenant of good faith does not trump or replace any express contractual term. *Stephenson v Allstate Ins. Co.*, 141 F Supp 2d 784 (Ed Mich 2001), *aff'd*, 328 F3d 822 (6th Cir., 2003); *Eastway and Blaum, infra*; *General Aviation v Cessna Aircraft*, 915 F2d 1038 (CA6, 1990); *Aetna Casualty & Surety Co. v Dow Chemical Co.*, 803 F Supp 1101, (ED Mich 1995); *Blackwell Ford, inc. v Calhoun*, 219 Mich App 203 (1996).

The Court declines Atlantic's invitation because Atlantic lacks a sound basis in law and in fact for its proposal. Atlantic has offered no authority (and none has been found by the Court) to the effect that the Court can reconstruct the contract utilizing UCC principles to create a new agreement between the parties. The ground is abandoned. See *Mitchum v City of Detroit*, 355 Mich 182 (1956).

Moreover, the Court does not accept Atlantic's theory for the reason it is not supported by competent or credible evidence. The Court finds JCI and Ford did discuss an in-house option, whereby JCI would bring the work inside JCI. The Court does not find JCI acted in bad faith or in violation of its contract with Atlantic by participating in such discussions with Ford. Moreover, Atlantic solicited Ford (in a letter) to perform the same function it now complains is being performed by JCI. The combined effort is not, per se, illegal. The Court finds there is not a causal link between Ford pressure on JCI and the termination of Atlantic. There were ample grounds for JCI to terminate Atlantic.

c) Limits of Sole Discretion.

Atlantic contends, under the UCC, that JCI's exercise of its "sole discretion" must be done in "good faith and reasonableness." Atlantic contends as a matter of law a duty of good faith in JCI's exercise of its discretion is legally required, and in this case JCI did not act in good faith because it had conspired and agreed with Ford to bring the production in-house. That is, if this Court finds that JCI did not act in good faith or was unreasonable, the Court can find that the termination by JCI was not legal.

JCI contends its termination of Atlantic was a proper exercise of its discretion and Atlantic agreed this right was reserved to JCI in the supply agreement. JCI contends that the discretion reserved under that express, negotiated term of the contract controls the conduct of the parties.

The issue of imposing conditions of good faith and reasonableness in a satisfaction contract has been previously addressed by many courts. The duties of both parties are set forth with specificity in the contract. Nothing in the contract suggests that the duties of either party are defined by anything other than the exercise of the sole discretion reserved to JCI. See, for example, *Burkhardt, v City National Bank*, 57 Mich App 649 (1975), see also *Isbell*, p 312, 313.

The Court concludes the discretion reserved by JCI in the agreement limits the Court's determination as to whether JCI was satisfied, in its sole discretion, with Atlantic's performance. The right of JCI to be the 'sole determiner' was a negotiated right, stated unambiguously in the May 2007 agreement, which was freely entered into by the parties, which this Court cannot second guess. The Court can examine the evidence to see if JCI's dissatisfaction was genuine, honest, in good faith or if it acted capriciously.

There has been no suggestion, and no evidence, that either party acted in bad faith during the negotiation of the agreement.

The Court does not find fraud (not alleged by Atlantic), bad faith, or dishonesty on behalf of JCI. The Court acknowledges and considers the evidence presented by Atlantic as to Ford's inquiry to JCI as well as Atlantic's theory of bad faith on behalf of JCI. Based on the testimony of the witnesses, all the exhibits and the Court's opportunity to observe the demeanor of the witnesses as they testified, and upon evaluation of the evidence, the Court does not find Atlantic's theory to be credible and rejects it as not credible. The Court finds JCI did not act fraudulently, in bad faith, dishonestly, disingenuously or capriciously. See *Isbell, supra*, at 314.

Judicial review of JCI's termination of Atlantic is limited. The individual judgment of JCI may not be second-guessed by the Courts by standards of correctness or reasonableness asserted by the afterthought of a party. See *Schermand, supra*. *Shermand* held that the *question of reasonableness is subject to the judgment of JCI and not the fact finder*. This is based on the standard of satisfaction of the party and not the Judge or jury. See *Lynes v Maxwell Farms*, 279 Mich 684 (1937); *Schroeder v Dayton Hudson Corp.*, 448 Fd 2d Sup 910, (ED, MI 1978).

Michigan law has imposed the requirement of genuineness in a satisfaction contract. However, as stated in *Maida, supra*, good faith must be exercised by the parties in the original negotiation of the contract terms. There is no evidence that JCI acted in bad faith when it proposed the "sole discretion" language in the May 2007 contract. The evidence shows that the contract was negotiated in good faith by both sides at arms length before it was entered into by both parties.

This contractual provision must be given full effect by the Court. See *Busam Motor Sales v Ford Motor Company*, 203 Fd 2d 2d 469 (6th Cir., 1953); See also *United States v City of White Hall*, 33 F Supp 2d 614 (1998).

The termination of Atlantic by JCI was contractually justified based on objective

evidence of JCI's dissatisfaction with Atlantic. The law states JCI's dissatisfaction must be genuine and not capricious. The Court finds JCI's dissatisfaction to be genuine, objective and reasonable (not capricious) as stated herein.

## B. Quality and Audit

JCI's termination of Atlantic included:

1. Atlantic's quality was unacceptable to JCI and;
2. A contractual audit performed by JCI revealed Atlantic's performance did not comply with Atlantic's representations as to its cycle time, part weight and amount of colarant used.

### 1. Quality

The Court finds:

1. Atlantic experienced quality problems in its part production.
2. JCI put Atlantic on notice that the quality of the parts produced by Atlantic needed to be corrected, including short shots, excess plastic that needed to be removed, (heat stakes), white spots, etc.
3. JCI characterized Atlantic's quality as being one of two of JCI's worst suppliers.
4. Atlantic exceeded JCI's minimum standards for part defects, although Atlantic had no defects in some months. The overall view was that Atlantic's quality was unacceptable to JCI.
5. Atlantic was put on notice of the quality problems. Some of the deficiencies were reduced to report cards. Ultimately, the remedy of the inspection of every piece by JCI was imposed by JCI.
6. Atlantic failed to meet JCI's quality standards.

7. JCI documented Atlantic's quality issues and these quality issues continued through April 2009.

8. Supplier material rejection reports were issued to Atlantic by JCI.

9. JCI initiated a material quality review.

10. The material quality review went through several levels, up to a an MQR level three (the highest), which was entered into shortly before JCI terminated Atlantic.

11. Atlantic's part per million rejection standard exceeded the maximum allowed in 2008 and 2009.

12. Atlantic sent a written notice to JCI that the quality issues had been resolved. JCI responded to Atlantic that the quality issues were not resolved and further that JCI was still not satisfied with Atlantic's quality.

The Court finds there was more than ample evidence to support JCI's termination of Atlantic for quality reasons.

The Court finds that JCI did not act in a capricious manner when it terminated the contract with Atlantic, based on Atlantic's quality.

## 2. Piece Price Audit

The May 25, 2007 letter agreement provides that the contract "may be cancelled" "by JCI "at any time" following:

i) "A *successful audit* and approval of piece price and tooling. JCI reserves the right to audit all tools and invoices..."

ii) Atlantic's submission, and Johnson Controls acceptance, of a *full piece price and tooling breakdown* to include *material, labor, burden, SG&A, profit*, and *any other detailed information* requested by JCI within two weeks to the date of this letter.

Atlantic acknowledges Johnson Controls will be entitled to possession of all tooling... packaging and all tooling... packaging

and all documents, *standards or specification, trade secrets, proprietary information* and other materials and items used by Atlantic to produce the parts listed above. Supply contract May 25, 2007, page 2, emphasis supplied.

JCI contends it was not satisfied with its audit of Atlantic. The audit was conducted in February 2008. The results of that audit, based on the evidence show:

1. JCI performed an audit of Atlantic.
2. The cycle time was faster than represented by Atlantic to JCI.
3. The parts weight was less than that represented by Atlantic to JCI.
4. The amount of colorant used was less than represented by Atlantic to JCI; and
5. The actual piece price cost to JCI, as a result of the audit, could have been less than set forth in the contract with Atlantic and was less than Atlantic reported. JCI did not approve the piece price.
6. The contract permitted JCI to conduct an audit to verify Atlantic's production. JCI performed an audit and was not satisfied with the results and told that to Atlantic.
7. JCI did not act in bad faith or capriciously in terminating the contract of Atlantic based on its dissatisfaction with the audit.
8. There was a great discrepancy between the piece price JCI paid Atlantic and the results of the audit conducted by JCI.
9. JCI did an investigation to determine its cost to manufacture the parts itself.
10. JCI determined it could make the parts for less than it cost JCI to buy them from Atlantic (the conclusion of JCI was that it could save \$2.9 million annually and \$16.9 over the life of the P356/Ford473 combined program).
11. Atlantic submitted a letter to Ford proclaiming it could save Ford \$2 million by having Atlantic function as the Tier 1 supplier (as opposed to Visteon or JCI) as well as produce the parts (prior to JCI becoming a party).

12. Atlantic acknowledged that one entity performing the production of the part, including freight cost, and the elimination of two different Tier 1/Tier 2 suppliers would result in cost savings on the ultimate production of the parts, when it tried to obtain the Tier 1 business from Ford.

13. The May 25, 2007 agreement required Atlantic to submit a full piece price and tooling breakdown to JCI. That breakdown included material, labor, burden, SG&A, profit and any other detailed informing by JCI.

14. JCI had the right to conduct an audit to confirm the figures of Atlantic. JCI could cancel the agreement if the audit was not successful, i.e. JCI was not satisfied with the audit results. The audit was not successful in JCI's "sole discretion" and JCI acted properly when it cancelled the agreement with Atlantic.

### 3. Amortization

On May 16th, 2007 JCI requested Atlantic identify all its amortized cost incorporated into its piece price. This request was done so that JCI could determine all the costs included in Atlantic's piece price. In addition, JCI required Atlantic to submit a detailed supplier cost breakdown sheet (SSOW). JCI told Atlantic, and Atlantic knew, that this information in the supplier cost breakdown was an important part of the sourcing process. The supplier breakdown sheet contained a line item for special amortization, with examples of what should be included on it such as equipment, tooling, R&D gauges, etc.

Atlantic submitted the supplier cost breakdown sheet to JCI for pricing approval. That sheet submitted by Atlantic showed there was no special amortization.

The quotes provided by Atlantic were incorporated into the Supplier Statement of Work (SSOW), and became a part of the working documents between the parties. Atlantic specifically identified "packaging" and costs on these forms.



Atlantic represented to JCI, in compliance with JCI's specifications, that there were no special amortizations (except packaging) and that the disclosed items represented all the costs included in Atlantic's piece price.

In June, 2009 Atlantic submitted its cancellation costs to JCI after JCI terminated the contract. Included in that cost analysis was \$4.1 million Atlantic claimed to have suffered as a result of the loss of the P356 program. Atlantic specifically identified the following items of loss: four injection molding presses, building expansion costs, assembly equipment, project management, engineering support, and launch costs.

Atlantic claimed that all of these cost were "rolled into" the piece price that JCI had paid Atlantic for part production. Atlantic contends this information was provided in a spot different than JCI requested, on the statement under 'machine cost' but Atlantic put it where it properly belonged according to industry standards.

JCI claims Atlantic failed to properly disclose costs under the contract. At the time JCI entered into the contract with Atlantic in May 2007, Atlantic had already been making the parts for Visteon/ACH.

This Court finds that Atlantic breached the Supply Agreement by not disclosing the amortization of the piece price where JCI specified it was to be itemized. Atlantic's claimed disclosure does not comply with the plain language of the contract that Atlantic was to complete the sheets (SSOW, etc) as required by JCI. It makes no sense Atlantic is to use the JCI form, but complete it using Atlantic's own discretion or not in compliance with the JCI requirements. Moreover, JCI did not agree to this method of disclosure. Atlantic agreed to complete the form "as requested by Johnson Controls" under the contract. Atlantic breached the contract by not disclosing costs in compliance with the contract, despite Atlantic's claim the disclosure comports with industry standards.

#### 4. Depreciation.

The Court finds that Atlantic's reported depreciation of the building over 14.5 years was contrary to its own documents which showed the building expansion was being depreciated over 30 years. The depreciation of 14.5 appears to be an afterthought in an effort to collect additional costs [money] after the contract was terminated by JCI. Atlantic has provided no credible explanation as to why the requested disclosures were not properly made to JCI under the contract. The Court rejects Atlantic's depreciation costs.

#### 5. Opportunity to Cure Parts Defects.

Atlantic asserted that the quality of the parts was good and acceptable. Atlantic contends if quality was deficient JCI should have given Atlantic the opportunity to correct the deficiencies. This theory does not accord with the plain terms of the contract. The case law is clear that the standard the Court must examine is whether or not JCI was capricious in its decision. The Court cannot rewrite the contract to add this provision. See cases *infra*, pages 19-21.

The record is replete with evidence that supports the conclusion that JCI's conduct was within the exercise of JCI's sole determination. Atlantic did not meet JCI's quality standards and JCI implemented quality assurance steps to correct and prevent the defects. JCI was not required contractually, to give Atlantic the opportunity to cure to Atlantic's satisfaction.

The Court finds that the right of cancellation in the contract agreed to by the parties pursuant to the negotiated agreement of the parties is not trumped by the UCC. See *General Aviation, Inc. v. Cessna Aircraft Company*, 915 Fd 2d 2d 1038 (Sixth Circuit, 1990); *Maida v Retirement and Health Service Corporation*, 795 Fd Sup 210 (EDMI 1992). See also *Eastway and Blaum, infra*.

The parties could have specifically negotiated a provision whereby Atlantic was to receive notice of a defect and be given the opportunity to correct it. No such provision exists in the contract between JCI and Atlantic. The Court rejects Atlantic's claim that the Court should enforce a contractual provision based on UCC or industry standards, when such was not provided for in the contract. *Cessna, supra*; *Ceruzzi, supra*. JCI placed Atlantic on escalating correction measures, including inspecting every part. JCI was still not satisfied with Atlantic's quality and so informed Atlantic. Atlantic had the opportunity to cure and prevent quality problems.

#### 6. Pretext.

Atlantic contends its termination was a pretext to enable JCI to bring the work in-house for JCI's own profit. In Michigan there is ample case law to support the proposition that, in a satisfaction contract termination must be genuine and not capricious. See *JR Watkins Company v Rich*, 254 Mich 82 (1931). However, a lack of good faith cannot supersede nor negate an express provision in the contract. See *General Aviation, Inc. v Cessna Aircraft*, 915 Fd 2d 2d 1038 (CA6, 1990).

After review of the testimony and evidence at trial the Court finds there is no credible evidence JCI entered into the contract, or cancelled it, in bad faith. See *Eastway* and *Blevins Agency v Citizens Insurance Company*, 206 Mich App 299 (1994). There is ample evidence that Atlantic was in breach of the contract.

JCI cannot act in a capricious manner in its cancellation of the contract. *Maida, Supra*. See cases *supra*, p23: 2001; *Zack, supra*. There is no credible evidence JCI acted in such a manner.

Moreover, where there are multiple reasons to cancel a contract, the fact one may not serve as a ground for termination does not negate the right of a party to exercise the

right to terminate when the other grounds serve as a valid basis.

There is strong evidence that as of April, 2009, JCI intended Atlantic would complete the P356 program and then JCI would possibly (even probably) in-source the P473 program. The Court rejects Atlantic's contention that JCI and Ford planned an early cancellation because it is not supported by credible evidence. The Court had an opportunity to observe the witnesses as they testified, evaluate their demeanor and examine all the testimony in light of the other evidence presented at trial. The Court concludes that Atlantic's theory of collusion between JCI and Ford is not supported by credible evidence and rejects it.

#### IV. TOOLS

The Court finds the issue of custody of the tools is governed by the May 25, 2007 Supply Agreement. That contract provides:

Atlantic acknowledge that *Johnson Controls will be entitled to possession of all tooling*. (Including fixture, gauges, jigs, patterns, castings, cavity dies and molds, with all related appurtenance, accession and accessories), packaging and all documents, standards or specifications, trade secrets, proprietary information and all other materials and items used by Atlantic to produce the parts listed above. (Supply Agreement, page 2, emphasis supplied).

JCI sued for the return of the tools and got them after it posted a bond, which it now seeks returned, together with its costs, and attorney fees. JCI also claims the tools were converted by Atlantic. The Court finds Atlantic breached the contract.

Atlantic denies any conversion of the tools. Atlantic claimed the right to retain them because it claimed JCI owed it over \$1 million. Atlantic initially asserted that ownership of the tools was in dispute and JCI did not have the requisite documents from Ford to allow it

to get the tools from Atlantic. Atlantic also contends the Molder's Lien permitted Atlantic to keep the tools because Visteon paid for them and Atlantic had no knowledge whether Ford had reimbursed Visteon (see Atlantic's closing argument).

The Court rejects Atlantic's contentions as nonmeritorious.

The plain language of the May 25, 2007 contract controls this issue. Atlantic specifically and expressly agreed that JCI would be entitled to possession of all the tooling to produce the parts. Atlantic wrongfully refused to turn the tools over to JCI in violation of its contractual obligation. See Award Letter and MCL 600.2919(a).

The Court also rejects Atlantic's contention that JCI had to establish to Atlantic's satisfaction that JCI had an ownership interest in the tools or that Atlantic had the right to hold the tools for the owner. These positions are not supported by any credible evidence. JCI twice told Atlantic (June 5, 2009 and June 10, 2009) that it would honor and satisfy any liens on the tools.

#### THE COURT FINDS:

1. After the contract was terminated JCI demanded Atlantic provide the tools to it so JCI could continue the production of the Ford P356 parts.
2. Atlantic refused to return the tools.
3. Atlantic held the tools and JCI was forced to go to court to retrieve them.
4. JCI obtained a court order granting JCI possession of the tools pending final judgment of this case.
5. Atlantic's refusal to turn the tools over to JCI after the demand is a breach of the supply contract.
6. Atlantic's retention of the tools also violates sections 13 and 24 of the global

terms and conditions.

7. The global terms and conditions are incorporated by reference into the supply contract. It provides "in any action brought by JCI... for possession of property, the parties agree that buyer [JCI] does not have an adequate remedy at law and buyer [JCI] is entitled to an immediate order for specific performance of seller's [Atlantic] obligations, plus buyer's [JCI's] reasonable attorney fees." Global Terms and Conditions, Section 13.

8. JCI promised to pay Atlantic any amounts due under the Michigan Molder's Lien Statute, MCL 445.618 to resolve Atlantic's objections to release of the tools.

9. Ford, (the Original Equipment Manufacturer, OEM), owned the tools, Ford authorized JCI (through an engineering order) to obtain the tools from Atlantic to continue production of the door part.

10. Atlantic's refusal to turn the tools over to JCI pursuant to the contract forced JCI to seek its legal remedy to obtain the tools.

11. JCI was legally entitled to possession of the tools, pursuant to its contract with Atlantic. This provision was in force at the time of the Court's July 20, 2000 order of possession was entered.

12. JCI obtained possession of the tools on July 17, 2009. JCI incurred costs and attorney fees beyond the normal costs of transitioning the tools to JCI.

13. JCI was required to post a cash bond in the amount of \$600,000 pursuant to the Court's July 20, 2009 order.

14. The damages JCI is entitled to for Atlantic's improper retention of the tools includes the amount JCI expended to recover them, including all attorney fees and costs.

15. The Court orders the immediate return of the \$600,000 to JCI paid to the clerk of the Court as a bond for the tools.

16. JCI is entitled to prejudgement interest for the use of the funds during the

duration of this action. Based on the statutory rates through April 3, 2013, the sum is \$38,468.

17. JCI is entitled to reasonable attorney fees which it claims is over \$23,000.

18. The balance of the interest, costs and fees shall be submitted to the Court by JCI and added to the Judgement.

## CONCLUSIONS

1. The Court finds the Supply Agreement is a satisfaction contract, the standard of satisfaction resides in JCI, the sole determiner of Atlantic's performance.

2. JCI's dissatisfaction with its audit of Atlantic and Atlantic's quality each provide an independent basis for JCI to cancel the P356 supply contract with Atlantic. Either ground is sufficient to support the termination of the contract.

3. The fact that there may be several reasons, one of which may be arguably suspect, for cancelling an agreement does not constitute bad faith in law. See *Tuff Raising Products, Inc. v Suzewski Motor Company*, 223 Fd 2d 35 (3rd Circuit, 2000).

4. The Court finds there was sufficient evidence of quality, price, and contractual noncompliance by Atlantic which was more than sufficient to warrant Atlantic's termination under the satisfaction contract.

5. Atlantic's counterclaim for breach of contract statutory conversion, and unjust enrichment are dismissed. They are not supported by credible evidence. No cause of action is returned on those claims.

6. JCI's claim Atlantic breached the contract has been sufficiently demonstrated by credible evidence.

13. JCI's claim for innocent and negligent misrepresentation are rejected. JCI

predicated these claims on what it would have done had those misrepresentations been known to it. The contract specifically provided for the price; which was set initially by Ford to JCI and Atlantic. The piece price could have been renegotiated under the contract. However, the exclusive remedy under the contract was to terminate Atlantic, which JCI did. Atlantic never agreed that JCI could unilaterally set a price, and

It is so ordered and judgment to this consistent with this opinion shall be entered by JCI.

2/14/2014

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Date

Brian R. Sullivan

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BRIAN R. SULLIVAN  
Circuit Court Judge